

Environmental Liability Release Program Guidance

**Bureau of Environmental Remediation
Remedial Section**

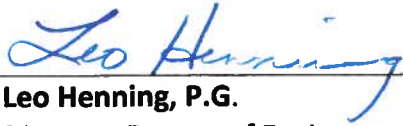
Policy # BER-RS-058



July 2016

Version 1.0

Concurrence



Leo Henning, P.G.
Director, Bureau of Environmental
Remediation

6-23-16

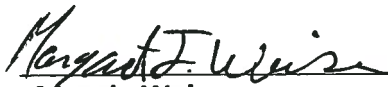
Date



Randy Carlson, P.G.
Remedial Section Chief

6/23/16

Date



Maggie Weiser
Unit Chief

06/22/2016

Date

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Appendix A: Contaminated Property Redevelopment Act

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Acronyms and Abbreviations

BER	Bureau of Environmental Remediation
CELR	Certificate of Environmental Liability Release
ESA	Environmental Site Assessment
KDHE	Kansas Department of Health and Environment
K.S.A.	Kansas Statutes Annotated
K.A.R.	Kansas Administrative Regulations
SOW	Scope of Work

Glossary

Applicant	The entity seeking a Certificate of Environmental Liability Release (CELR), may also be referred to as purchaser or prospective purchaser
Certified Property	Real property subject to a CELR
Certificate Holder	An applicant to whom a CELR has been issued
Environmental Contamination	Has the meaning specified in K.A.R. 28-73-1(d)
Phase I ESA	Phase I Environmental Site Assessment Report meeting current industry standards (ASTM E1527-13, and subsequent versions)
Phase II ESA	Phase II Environmental Site Assessment Report
Property	Real property

1. Introduction

The Kansas Legislature passed the Contaminated Property Redevelopment Act (“Act”) which was signed into law on May 9, 2016. The Act authorizes the Kansas Department of Health and Environment (KDHE) to issue Certificates of Environmental Liability Release (CELR) to certain prospective purchasers of contaminated properties.

The KDHE Bureau of Environmental Remediation (BER) developed this policy to facilitate implementation of the Environmental Liability Release Program. This policy outlines:

- CELR Property Classifications;
- Application and Review Process; and,
- Future Obligations

A CELR releases a prospective purchaser of a contaminated property from liability for environmental contamination to the State of Kansas. The Act provides that CELRs do not apply to certain types of contamination, such as lead based paint, asbestos or radiological materials. CELRs have no effect on third-party liability, liabilities assumed through contractual means, or liability to local governments or the United States.

If KDHE finds that an applicant provided false or inaccurate information to the department in order to obtain a CELR, the CELR may be revoked, the applicant may be held liable to implement a cleanup of the property, and KDHE may assess an administrative penalty of up to \$500 per day.

2. CELR Property Classifications

CELR classifications and associated fees are based on the size and complexity of the site and property and, consequently, the level of effort required to make an eligibility determination. Accordingly, the fee for simple Class I CELR properties is lower than more complex Class III CELR properties. To be considered a Class I or Class II CELR property all criteria, as specified herein for Class I and Class II must be met. All other properties will be considered a Class III CELR property.

Class I CELR Property- \$700 fee

- Current Phase I Environmental Site Assessment (ESA) completed for the applicant which includes a *recorded land title records* search
- Phase II ESA or other assessment performed that demonstrates the presence of environmental contamination
- Applicant is not the current owner of the property
- Ownership history is straightforward and current and historical operations have been similar in nature. For example, a single parcel property with minimal property transfers

will result in a more expedited review than a property that has changed hands multiple times and includes multiple parcels.

- Applicant was able to affirmatively check each box in Sections 3 and 5 of the application and no further research of these matters is necessary

Class II CELR Property- \$1,000 fee

- Current Phase I ESA completed for the applicant which includes a *recorded land title records* search
- Phase II ESA or other site documents demonstrate presence of environmental contamination
- Applicant may be the current owner of the property and meets the requirements outlined in the Act and Section 2 of the application
- Ownership history is slightly more complex than a Class I Property (i.e., multiple previous owners, tenants, or parcels) but current and historical operations have been similar in nature
- Applicant was able to affirmatively check each box in Sections 3 and 5 of the application and no further research of these matters is necessary.

Class III CELR Property- \$2,000 fee

All other properties not meeting the criteria for Class I or Class II which may consist of the following:

- No current Phase I ESA but a Phase II or other assessment performed that demonstrates the presence of environmental contamination has been completed
- Applicant may be the current owner of the property and meets the requirements outlined in the Act and Section 2 of the application
- Complex ownership history which includes various facility uses and operations varying across multiple industries
- Applicant was not able to affirmatively check each box in Sections 3 and 5 of the application requiring additional research before issuing a CELR
- Property may consist of multiple parcels

3. Application and Review Process

The CELR application is provided in Appendix B. The application requires affirmative statements addressing each of the eligibility criteria specified in the Act. The application must be signed and notarized. In addition, each application package must include the following components:

- Current Phase I or Phase II ESA report;

- An environmental assessment report or other document(s) presenting analytical data confirming the presence of environmental contamination; and
- Payment in the full amount for the property classification specified above. Payments must be made by check addressed to KDHE CELR Program and mailed to:

Environmental Liability Release Program
Attn: Long-term Stewardship Unit Chief
KDHE Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, KS 66612-1367

KDHE will accept electronic copies of the ESA reports and other relevant documents on a compact disc or flash drive accompanying the application. Alternatively, the relevant documents may be uploaded via KDHE MoveIt web portal. If the applicant selects the KDHE MoveIt option in Section 4 of the application, following receipt of the application, KDHE will send an invite to the applicant with instructions for uploading documents via MoveIt.

KDHE has 15 business days from the date the complete CELR application package (including all required information and application fee) is received to determine eligibility. KDHE will evaluate each application for completeness, including whether the correct payment amount was provided. Applicants will be notified within three to five business days if their application is incomplete and what additional information is required. KDHE's 15-day review timeframe does not begin until all required application components (including any supporting documents uploaded via MoveIt as described above) have been received by the program.

Applicants are obligated to provide a complete and accurate response to all items requested in the application. By signing the application, an applicant certifies the accuracy and completeness of the information contained therein and further agrees to adhere to certain terms and conditions upon issuance of a CELR, as specified in Section 4 of this document. In the event an applicant realizes that inaccurate or incomplete information was provided, the applicant must immediately notify KDHE of the deficiency and provide a corrected response. In the event KDHE determines any fraudulent information was provided to obtain a CELR, KDHE may assess an administrative penalty of \$500 per day beginning with the signature date of the application to the date KDHE was made aware of the false information.

Upon receipt of a complete application package, KDHE will review the application against the eligibility criteria to determine if a CELR shall be issued to the applicant. Both the applicant and the property must meet the eligibility requirements for a CELR to be issued. These criteria are specified in the Act and summarized on the following page.

CELR ELIGIBILITY CRITERIA

Applicant/Purchaser

- Applicant/Purchaser is not the party responsible for the contamination nor has caused or exacerbated the contamination on the property.
- Purchaser does not currently own the property or Applicant currently owns the property and:
 - The property was acquired through seizure, condemnation closure or default, or the applicant is the State of Kansas, department or branch of state government, or any agency, authority, institution or other instrumentality thereof or any county township, city, school district, or other political taxing subdivision of the state, or any agency, authority institution, or other instrumentality thereof; **and**
 - The applicant did not know and could not have reasonably foreseen the threat of contamination or the applicant did know of potential contamination and took reasonable steps to prevent the exacerbation of the identified contamination.
- There is no direct or indirect familial relationship or any contractual, corporate or financial relationship between the applicant/purchaser and the owner or the party responsible for the contamination, other than that by which the applicant's interest in the property was conveyed or financed.
- The applicant/purchaser has not provided indemnification or release of environmental liability to any other party regarding contamination at the property.
- The applicant/purchaser is not subject to a contract, agreement, or order with the intended purpose of performing investigation or remediation of contamination at the property.

Property

- Property is contaminated (not including radon, lead-based paint or asbestos).
- Property was acquired after July 1, 2016.
- The property is not subject to regulation under the Nuclear Energy Development and Radiation Control Act K.S.A. 48-1601.
- The property is not eligible for a CELR if the property is the source of the contamination and:
 - is eligible for cleanup under the Kansas Storage Tank Act, K.S.A. 65-34,100 *et seq.* or the Kansas Drycleaner Environmental Response Act, K.S.A. 65-34,141 *et seq.* unless the site has been enrolled into the appropriate cleanup program under such acts as applicable; or
 - is listed or proposed for listing on the national priorities list of superfund sites established under the Comprehensive Environmental Response Compensation and Liability Act.

ELIGIBLE CELRS: If KDHE determines a property and applicant is eligible (i.e., a Certified Property and Certificate Holder, respectively), the agency will prepare the CELR document for execution by the Director of the Division of Environment, or their designee. Two original copies of each CELR will be generated. One copy of each CELR will be retained by KDHE; the second copy will be sent by overnight delivery to the applicant. Persons receiving a CELR (i.e., Certificate Holder) are encouraged to file a copy of the CELR with the Register of Deeds in the applicable county. The CELR template is provided as Appendix C.

INELIGIBLE CELRS: KDHE will provide written notification to the applicant if a property or applicant is determined to be ineligible for a CELR. The written notification will specifically identify the criteria which make the property and/or applicant ineligible. Within 15 days of receiving the ineligible notice, the applicant may appeal to the CELR Program Manager by providing supplementation information contrary to KDHE's determination. KDHE will evaluate the new information and notify the applicant whether KDHE's initial determination remains valid. Applicants may appeal the department's decision to not issue a CELR by providing a written request for a hearing within 15 days of receipt of the final ineligibility determination. KDHE will refund the applicant its application fee, less the amount expended by KDHE to review and process the application, for final ineligible determinations.

4. Future Obligations

An applicant's notarized signature on the approved application serves as acknowledgement by the Certificate Holder of its future obligations to maintain validity of the issued CELR. Effective upon KDHE's issuance of a CELR, each Certificate Holder agrees to the following conditions:

- To provide reasonable access for future environmental investigation and remediation by KDHE or other party performing investigation and remediation under the oversight of KDHE;
- Not to exacerbate or otherwise increase risk posed by contamination associated with the property or interfere with a department-approved remedy on the property;
- To provide notification to KDHE within 30 days of sale or transfer of the property to which the Certificate Holder is a party;
- To disclose the CELR to any future purchasers of the property, until such time as the cleanup levels for unrestricted use have been attained at the property; and
- To comply with all requirements specified in any environmental use control agreements or risk management plans established for the Property

If KDHE determines that the Certificate Holder is not in compliance with the Act or adhering to the terms of the CELR, KDHE will provide written notification to the Certificate Holder advising them of the specific requirements not being met, providing direction and establishing an appropriate deadline for getting back into compliance, and potential ramifications for remaining out of compliance. The Certificate Holder will have up to 30 days, or less when more immediate actions are required, to correct any non-compliance issues outlined in the written notice. If after the established deadline the Certificate Holder is still not in compliance with the CELR requirements, KDHE may revoke the CELR.

CELRs may be void if the Certificate Holder acquires liability for environmental contamination at the Certified Property through contract, law or other mechanism following issuance of the CELR. However, with prior written approval of KDHE, Certificate Holder may perform certain remedial actions at a site that would otherwise be performed by a responsible party or other stakeholder without jeopardizing its CELR provided these actions are performed voluntarily and without any assumption of liability. For example, with KDHE approval, a Certificate Holder may implement a soil removal to address a source area within a proposed building footprint as part of construction activities without automatically triggering the nullification provision provided in the Act, Section 7(d). In such cases, the Certificate Holder would still be required to abide by any applicable or relevant and appropriate requirements for the actions being performed (e.g., solid waste handling and disposal, stormwater management, etc.). If the work performed is part of an agreement with a previous owner/operator of the property or the party responsible for the contamination, KDHE may request a copy of such an agreement be submitted for KDHE review to ensure that liability for the contamination does not shift to the Certificate Holder, and therefore, does not trigger Section 7(d) of the Act. Further, any spills, releases, discharges, abandonment, or disposal of hazardous substances, wastes, or pollutants caused by the Certificate Holder that are not appropriately managed may be considered an exacerbation of environmental contamination at the site and subject the Certificate Holder to additional requirements or potentially revocation of the CELR.

As noted above, by signing the application, an applicant certifies the accuracy and completeness of the information contained therein and agrees to the conditions of being a Certificate Holder. In the event a Certificate Holder realizes that inaccurate or incomplete information was provided to KDHE in the application, the Certificate Holder must immediately notify KDHE of the deficiency and provide a corrected response. KDHE will review the new information and determine whether it affects the viability of the CELR. In the event KDHE finds that fraudulent information was provided by the Certificate Holder as part of the application to obtain a CELR, KDHE may:

- Order the Certificate Holder to take emergency action necessary to protect human health and the environment;
- Order the Certificate Holder to implement a cleanup to allow for unrestricted use of the property;
- Assess an administrative penalty of \$500 per day from the date of the application to the date KDHE determined false information was provided by the Certificate Holder; or,
- Revoke the CELR.

A CELR shall not be transferred from the Certificate Holder to another prospective purchaser or applicant. Each person must apply for and obtain its own CELR albeit the property being acquired is a Certified Property as defined in this policy.

Appendices

Appendix A
Contaminated Property Redevelopment Act

House Substitute for SENATE BILL No. 227

AN ACT concerning economic development of environmentally contaminated property; relating to liability for cleanup costs; enacting the contaminated property redevelopment act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The intent of this act is to provide a mechanism to allow real property with environmental contamination to be purchased without the purchaser becoming liable for cleanup costs. This act establishes the contaminated property redevelopment fund to help municipalities redevelop contaminated and potentially contaminated properties. This act shall be known and may be cited as the contaminated property redevelopment act.

Sec. 2. As used in this act:

(a) “Certificate of environmental liability release” or “CELR” means a certificate issued by the department that releases the purchaser from environmental liability for contamination existing at the time of issuance of the CELR on a property from actions taken by the bureau of environmental remediation under K.S.A. 65-159, 65-161 through 65-171z, 65-3401 et seq., 65-3430 et seq. and 65-3452a et seq., and amendments thereto.

(b) “Department” means the Kansas department of health and environment.

(c) “Owner” means any owner of record of property or authorized representative.

(d) “Person” means any individual, trust, firm, joint stock company, public or private corporation, limited liability company or partnership; the federal government or any agency or instrumentality thereof; any state, or any agency, instrumentality or political or taxing subdivision thereof; or any interstate body.

(e) “Property” means real property.

(f) “Purchaser” means any person who is acquiring property through purchase, foreclosure or default. For purposes of this act, “purchaser” does not include the federal government or a person who acquires property through gifts, bequests or inheritance.

(g) “Secretary” means the secretary of health and environment.

(h) “Site” means all areas and media to which environmental contamination or pollution has been released, transported or migrated.

Sec. 3. (a) A property shall be eligible for a CELR from the department if the purchaser submits a complete application to the department and the department finds that:

(1) The property is contaminated, not including contamination resulting from radon, lead-based paint or asbestos;

(2) the purchaser is not the party responsible for the contamination;

(3) the property is:

(A) Not currently owned by the purchaser;

(B) currently owned by the purchaser and was acquired through seizure, condemnation, foreclosure or default; or

(C) currently owned by the purchaser and the purchaser is the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof; or any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof;

(4) if the purchaser is a current owner, the purchaser could not have reasonably foreseen the threat of contamination and failed to take reasonable steps to prevent the contamination;

(5) there is no direct or indirect familial relationship or any contractual, corporate or financial relationship between the purchaser and the owner or the party responsible for the contamination, other than that by which such purchaser’s interest in the property was conveyed or financed; and

(6) the property is not ineligible for a CELR pursuant to the provisions of section 4, and amendments thereto, and the purchaser has met the conditions required by section 4, and amendments thereto.

(b) It shall be the sole responsibility of the purchaser to provide the needed documentation to the department for the department to make an eligibility determination. These documents shall include:

(1) Phase I or Phase II environmental reports that are completed within industry standards;

(2) environmental assessment reports that are completed within industry standards; or

(3) other reports that will expedite the department's determination requested by the department.

(c) In making eligibility determinations, the department shall have authority to consider such additional factors as deemed relevant by the department, including the current and potential future use of the property.

(d) The department shall make a determination of eligibility or non-eligibility within 15 business days of receiving the application and all required information.

(e) Only property acquired after July 1, 2016, shall be eligible for a CELR.

Sec. 4. (a) In addition to the findings required for a determination of eligibility by the department pursuant to section 3, and amendments thereto, the department shall only grant a CELR upon the following conditions:

(1) The department determines that the purchaser has not caused or exacerbated and will not exacerbate the contamination on the property;

(2) the purchaser agrees to disclose the CELR to subsequent purchasers until the property can be used for unrestricted use;

(3) the purchaser agrees to reasonable access for future environmental investigation and remediation by the department or other party performing investigation and remediation under the oversight of the department; and

(4) the purchaser agrees to provide the department notification within 30 days of any transfer or sale of property that is subject to a CELR.

(b) Property shall not be eligible for a CELR if:

(1) The contamination on the property is subject to regulation under the nuclear energy development and radiation control act, K.S.A. 48-1601 et seq., and amendments thereto;

(2) the property is the source of the contamination and it is eligible for cleanup under the Kansas storage tank act, K.S.A. 65-34,100 et seq., or the Kansas drycleaner environmental response act, K.S.A. 65-34,141 et seq., and amendments thereto, unless the site has been enrolled into the appropriate cleanup program under such acts as applicable;

(3) the property is the source of the contamination and it is listed or proposed for listing on the national priorities list of superfund sites established under the comprehensive environmental response, compensation and liability act (CERCLA) (42 U.S.C.A. § 9601 et seq.);

(4) the purchaser has entered into or is the subject of one or more contracts, agreements or orders with the intended purpose of performing investigation or remediation of contamination at the property; or

(5) the purchaser has provided indemnification or release of environmental liability to any other party regarding contamination at the property.

(c) A CELR does not relieve the holder of requirements or duties of an applicable environmental use control agreement or risk management plan.

Sec. 5. The purchaser shall submit payment to the department of a fee with the CELR application. The fee for the CELR shall be determined by the department by rules and regulations, but shall not exceed \$2,000 and shall be based on the size and complexity of the site and property as determined by the department. If a CELR is not issued by the department, a refund shall be issued to the purchaser less the amount expended by the department to review and process the application.

Sec. 6. (a) A person may submit a request to the department for approval to modify a CELR. The department shall approve or deny the request within 30 business days after the department's receipt of the request. If the department denies the request, justification shall be provided with a written explanation of the denial. A denial by the department may include as a justification for denial that the person has not provided the necessary documentation to justify the modification as determined by the department.

(b) A CELR is not transferable.

(c) The department shall not acquire any liability by virtue of this act. Sec. 7. (a) If the department determines that fraudulent information was provided by the purchaser to the department for the purpose of obtaining a CELR, the secretary may take such actions as necessary to protect human health or the environment and may take actions including, but not limited to:

(1) Issuing an order directing the purchaser to take any emergency action necessary to protect human health and the environment;

(2) issuing an order revoking the CELR;

(3) issuing an order that will require the purchaser to implement a cleanup of the site to a standard that will allow for unrestricted use; or

(4) assessing an administrative penalty of up to \$500 per day starting from the date of the application to the date the department determined false information was provided by the purchaser.

(b) Failure by a CELR recipient to grant reasonable access as required by this act or failure to otherwise comply with this act shall result in revocation of the CELR by the department.

(c) If an owner who has received a CELR exacerbates the contamination or interferes with a department-approved remedy on the property, the department shall revoke the CELR.

(d) If an owner who has received a CELR acquires liability for the contamination through contract, law or other mechanism, the CELR shall be null and void.

Sec. 8. (a) There is established in the state treasury the contaminated property redevelopment fund, which shall be administered by the secretary. Moneys collected by the secretary from the following sources shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto, and deposited in the state treasury to the credit of the fund:

(1) Fees for CELR applications;

(2) the federal brownfields program;

(3) gifts, grants, reimbursements or appropriations from any source intended to be used for purposes of the fund;

(4) interest attributable to the investment of moneys in the fund;

(5) penalties collected pursuant to this act; and

(6) repayment of any brownfields loan, including interest and fees.

(b) Expenditures from the contaminated property redevelopment fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or the secretary's designee for the following purposes:

(1) Review and approval of CELR applications;

(2) oversight and modifications of completed CELRs;

(3) development, operation and maintenance of the CELR tracking system;

(4) loans to municipalities for assessment and cleanup actions at brownfields redevelopment projects;

(5) grants to municipalities for assessment and cleanup actions at brownfields redevelopment projects; and

(6) administration and enforcement of the provisions of this act.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the contaminated property redevelopment fund interest earnings based on:

(1) The average daily balance of moneys in the contaminated property redevelopment fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

Sec. 9. The secretary may adopt rules and regulations necessary to implement the provisions of this act.

Sec. 10. Any person adversely affected by any order or decision of the secretary under this act may, within 15 days of service of the order or decision, request a hearing in writing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.

Appendix B
Kansas Certificate of Environmental Liability Release Application

KANSAS CERTIFICATE OF ENVIRONMENTAL LIABILITY RELEASE APPLICATION

Please read each section carefully to ensure a complete and accurate response. Any incorrect or incomplete sections could result in processing delays or render the application void. The applicant must be able to demonstrate and provide the necessary documentation (Section 4) that contamination exists on the property. If this requirement cannot be met, please do not proceed with the application process.

Section 1. APPLICANT

Applicant Name:		Contact Name:	
Address:	City:	State:	Zip Code:
Primary Phone:		Alternate Phone:	
Email:			

The applicant as identified above ("APPLICANT"), hereby certifies to the State of Kansas that the APPLICANT is *[mark only one box]*

- ☐ a prospective purchaser
- ☐ the current owner (must be a governmental entity or financial institution)

of real property ("PROPERTY") located at the address identified below and seeks a Certificate of Environmental Liability Release ("CELR").

Property Address:		
City (or Township):	County:	Zip Code:
Tax Lot # or Parcel Identification #:		
Legal Description:		

Section 2. PROPERTY OWNERSHIP

If APPLICANT is the current owner, per Section 1, please check the following boxes *[mark all that apply]*:

- ☐ APPLICANT acquired the PROPERTY through seizure, condemnation, foreclosure or default.
Date of PROPERTY acquisition: _____
Please attach all documentation necessary for verification purposes.
- ☐ APPLICANT is the State of Kansas or subdivision thereof, a county, township, city, school district, or other political or taxing subdivision of the state.
- ☐ APPLICANT did not know and could not have reasonably foreseen the threat of contamination.
- ☐ APPLICANT knew of potential contamination on the PROPERTY and took reasonable steps to prevent the exacerbation of the identified contamination.

Please provide details in the space provided about the known conditions of the property at the time of acquisition and any actions that may have been performed to address any identified contamination. Please provide supporting documentation, if available, for KDHE consideration.

If APPLICANT is a prospective purchaser, per Section 1, provide the following PROPERTY ownership information.

Owner Name:		Contact Name:	
Address:	City:	State:	Zip Code:
Primary Phone:		Alternate Phone:	
Email:			
Anticipated Property Transfer/Closing Date:			

Section 3. CONFLICTS, AGREEMENTS, and INDEMNIFICATION

The APPLICANT affirms *[mark all that apply]*:

- ☐ no direct or indirect familial relationship with the current PROPERTY owner;
- ☐ no direct or indirect familial relationship with the party responsible for the contamination;
- ☐ no contractual, corporate, or financial relationship with the current PROPERTY owner or the party responsible for the contamination, other than that by which such APPLICANT'S interest in the PROPERTY was conveyed or financed;
- ☐ it has not entered into nor is the subject of any contracts, agreements, or orders with the intended purpose of performing investigation or remediation of contamination at the PROPERTY; and,
- ☐ it has not provided indemnification or release of environmental liability to any other party regarding contamination at the property.

[Not marking all of the boxes in Section 3 may render the APPLICANT ineligible for a CELR. Please provide an explanation in the space below for any unmarked boxes and provide supporting documentation for KDHE consideration].

Section 4. CONTAMINATION AND DOCUMENTATION

Documentation of the presence of contamination at the PROPERTY is required to issue a CELR. Please indicate which of the below documents have been completed and will be provided to KDHE for consideration [*mark all that apply*].

- ☐ A current Phase I Environmental Site Assessment prepared on behalf of the APPLICANT
- ☐ A current Phase II Environmental Site Assessment prepared on behalf of the APPLICANT.
- ☐ Other Environmental Assessment Reports which document the presence of contamination on the PROPERTY or any other information to facilitate KDHE's review.

The APPLICANT must provide a list of all reports and other documents, including those referenced in previous sections, to be submitted to KDHE in support of this application. Please indicate whether such reports and documents are enclosed with this application or if the APPLICANT prefers to upload via KDHE MoveIT web portal*.

Document Title (Attach additional list as needed)	Enclosed		MoveIT
	Hard Copy	CD, flash drive	

*KDHE will accept either hard copies or electronic copies (i.e., compact disc or flash drive) of the documents as attachments to this application. Alternatively, the APPLICANT may select to upload the documents via KDHE MoveIT web portal. If the APPLICANT selects the KDHE MoveIT option, following receipt of the application, KDHE will send an invite to the APPLICANT with instructions for uploading.

Section 5. SIGNATURE

By signing this document, the undersigned acknowledges they are the authority to sign this application and certifies that [*please mark all that apply*]:

- ☐ the applicant is not the party responsible for the contamination;
- ☐ the applicant has not caused nor exacerbated the contamination on the PROPERTY;
- ☐ the information provided herein is true, accurate, and complete to the best of the applicant's knowledge;
- ☐ the applicant agrees to provide immediate notification to KDHE BER in the event new information becomes available that may be contrary to that provided herein; and,
- ☐ upon receiving a CELR, the applicant agrees to adhere to the future obligations set forth below:
 - provide reasonable access for future environmental investigation and remediation by KDHE or other party performing such actions under the oversight of KDHE;

- not to exacerbate or otherwise increase risk posed by contamination associated with the PROPERTY or interfere with a department-approved remedy on the PROPERTY;
- provide notification to KDHE within 30 days of sale or transfer of the PROPERTY to which the applicant is a party;
- disclose the CELR to any future purchasers of the PROPERTY; and
- comply with all requirements specified in any environmental use controls agreements or risk management plans established for the PROPERTY.

Please note, this application will not be approved if any of the boxes in Section 5 remain unchecked.

The undersigned has enclosed the appropriate application fee (*mark only one*).

☐ Class I CELR Property \$700 ☐ Class II CELR Property \$1,000 ☐ Class III CELR Property \$2,000

Providing false, inaccurate, or incomplete information to BER or failing to provide updated information as required may render the Site ineligible to receive a CELR. Execution of this application form does not constitute a CELR, and the undersigned may terminate this application at any time by notifying KDHE BER.

The application and associated fee should be submitted to:

Environmental Liability Release Program
Attn: Long-term Stewardship Unit Chief
KDHE Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, KS 66612-1367
Phone: 785-296-1673

Name (print or type): _____ Title: _____

Signature: _____ Date: _____

State of _____

County of _____

This instrument was acknowledged before me on [insert date] _____ by [Name of applicant]
_____ whose identity was proved to me on the basis of
satisfactory evidence.

Notary Public

Appendix C
Kansas Certificate of Environmental Liability Release Template

KANSAS CERTIFICATE OF ENVIRONMENTAL LIABILITY RELEASE

Based upon the representations and information provided in the Kansas Certificate of Environmental Liability Release Application, the Kansas Department of Health and Environment hereby releases the following person(s) from any liability for contribution, subrogation, or otherwise for any costs incurred for environmental response, investigation or remediation of the property specified below pursuant to K.S.A. 65-34XXX.

CERTIFICATE HOLDER: *NAME*
 CONTACT
 ADDRESS
 CITY, STATE, ZIP

This Certificate of Environmental Liability Release is granted only in connection with the Certificate Holder's interest in the following legally described property and is not transferrable to any other person or property. This certificate may be filed with the Register of Deeds to reflect the Certificate of Environmental Liability Release granted hereby for the environmental condition of the property or properties

CERTIFIED PROPERTY: *LEGAL DESCRIPTION*
 STREET ADDRESS
 PROPERTY CITY, STATE, ZIP

Issuance of this certificate is conditioned upon the Certificate Holder's ongoing compliance with the terms specified in the signed Application and KS.A. 65-34XXX. This Certificate of Environmental Liability Release may be revoked, the Certificate Holder may be subjected to administrative penalties, and the Secretary make take such actions necessary to protect human health or the environment if fraudulent information was provided to the Department by the Certificate Holder.

<NAME>, Director, Division of Environment
Kansas Department of Health and Environment

Date

Certificate No.